cannot commit an act of bankruptcy in the Colony through an agent, if he wishes to do so, though the principal is out of the jurisdiction.

There is another principle laid down in *Macleod's case (supra)* and that is that if the legislation of a Crown Colony can be given an interpretation that makes it *intra vires* the colonial legislature, that is the interpretation which must be placed upon it.

I therefore do not share the doubts which Barrett-Lennard J. appears to have entertained about the validity of part of the Bankruptcy Ordinance.

The decision of Barrett-Lennard J. was "followed by courtesy, but not by conviction" by Sir William Murison C. J. in *Re Chop Nam Chiang Long (Tew Teng Choon, proprietor)*; *ex parte the Official Assignee*, (1927) S.S.L.R. 28. Murison, C.J.'s own view was that the provision of the "Ordinance allowing the adjudication of a bankrupt resident and domiciled in China who has carried on business by an attorney with full powers, is not *ultra vires*," but he seems also to have been of opinion that any act of bankruptcy of an agent is an act of bankruptcy done by the absent principal because he regards *ex parte Blain (supra)* as being nullified by the Act of 1914. That is the argument upon which the appellant in *Re Debtors (supra)* tried to get rid of *Vogeler's case (supra)*, but as I understand *Re Debtors (supra)* the only difference effected by the change in the law is to make a person a "debtor" who was not one before the Act of 1914 and that it did not affect acts of bankruptcy.

The principle enuniciated by Brett L.J. (as he then was) in *Ex parte Blain (supra)* that the act of bankruptcy of an agent—in that case the act of some English partners—is not to be deemed the act of bankruptcy of a partner who has not authorised it, is not affected by the newer legislation.

The question is one of agency and Brett L.J. was clearly of opinion that agency without authorisation or cognizance is insufficient to impute an act of bankruptcy to another partner or to a principal.

Had it been shewn that E. M. Abdulla and E. M. Abdul Hamid authorised or approved the act of bankruptcy committed by their partner in Singapore, I would have adjudicated them for an act of bankruptcy committed by them within the jurisdiction although they were at all material times outside the jurisdiction; but there being nothing to shew that the very personal act of the managing partner in absconding was authorised or approved by the partners in India I am, for the reasons I have given, of opinion that they in India have not departed from their dwelling house in Singapore (a dwelling in which they did not dwell) or absented themselves from their place of business in Singapore (in which they were at no material time present) with intent to delay or defeat their creditors, just because their managing partner did these acts.

I therefore dismiss the motion.

Motion dismissed.

Solicitors for the petitioning creditors—*Barrett & Co.*

[APPELLATE CRIMINAL JURISDICTION]
TERRELL, J.
April 28, 1938.

REX v. NG CHIM POH.

[SINGAPORE SPECIAL CASE No. 2 of 1938]

Liquor Revenue Ordinance (Cap. 225), s. 38, sub-s. 1 — Liquor Licensing Rules 1937, — Rule 57—Selling beer by retail for consumption off the licensed premises.

A licence in the usual form only professes to deal with the consumption of liquor on the licensed premises. Where as in the case of beer, no license is required for sale off the premises, there is no prohibition in the licence itself.

Rule 57 of the Licensing Rules 1937, which absolutely prohibits the holder of a liquor shop license from exposing for sale any intoxicating liquors whatever other than Chinese liquors, is inconsistent with the express provisions of s. 38, sub-s. 1 of the Liquors Revenue Ordinance and is accordingly *ultra vires*.

SPECIAL CASE STATED.

Demuth for appellant.

Worley for the Crown.

The facts and arguments appear sufficiently from the Judgment.

Cur. Adv. Vult.

TERRELL, J.—The accused was charged before the 4th Magistrate, Singapore, with an offence under Rule 57 of the Liquor Licensing Rules, 1937. The actual charge was as follows:—

> That he, being the licensee of liquor shop at No. 10 Joo Chiat Road, on 13-1-38 did sell an article other than Chinese liquor or non-intoxicating liquors, to wit, one unopened pint bottle of Tiger beer, an offence against Rule 57 of the Liquor Licensing Rules, 1937, and punishable under section 77 of the Liquors Revenue Ordinance.

The sections of the Ordinance (No. 225) which are relevant are as follows:—

> 38.—(1) No person shall sell by retail or offer for sale by retail, or permit to be so sold or offered, or have in his possession for sale by retail any intoxicating liquors or toddy, except under and in accordance with a licence in that behalf issued under this Ordinance and in a place in such licence specified, provided that the sale of ale or beer or stout or porter in unopened reputed quart bottles or reputed pint bottles or reputed half-pint bottles, for consumption elsewhere than on the premises of the vendor, shall not constitute an offence under this section.

38.—(3) Such licences:—

(a) shall be issuable by the licensing authority on payment of the prescribed fee and be subject to such conditions as the licensing authority sees fit by endorsement on the licence to impose.

51.—(1) The Licensing Officer may in his discretion issue or transfer or cancel licences, to be called "liquor-shop licences," for the sale by retail for consumption on or off the premises where they are sold of intoxicating liquors, excluding ale, beer, stout, whisky, brandy, gin, rum and such other liquors as are prescribed.

Under section 90(1) of the Ordinance the Governor in Council may make rules for any of the following purposes:—

(q) to prescribe the restrictions under and the conditions on which licences may be issued under this Ordinance, and

(s) to prescribe the liquors which may not be sold.

Section 90(3) and (4) provide that the rules (after publication in the Gazette) shall be laid before the Legislative Council and shall remain in force until disapproved or altered by a resolution of the Legislative Council.

Section 90(5) reads as follows:—

Any rule altered by a resolution of the Legislative Council shall come into force as altered from the date of the passing of such resolution, and shall have the same force and effect as if enacted in this Ordinance.

From this it would appear that only when a rule has been altered by a resolution of the Legislative Council has it the force of law. Any other rule which has been merely tabled must therefore be consistent with the provisions of the Ordinance itself.

The licence issued in the present case was in Form N in the Schedule to the Ordinance with certain conditions indorsed. Such conditions are not material to the question now before the Court. The licence has however stamped upon it the following statement:—

"For consumption on the premises only." This indorsement is rendered necessary by the provisions of section 51(1) quoted above, which enables a liquor-shop licence to be issued for the sale of intoxicating liquors (excluding beer, etc.) *on or off* the premises.

The learned Magistrate acquitted the accused on the following grounds:—

(1) that such part of Rule 57 of the Liquor Licensing Rules, 1937, as conflicts with the express words of section 38(1) of the principal Ordinance is *ultra vires* and that therefore the sale of an unopened pint bottle of beer for consumption off the premises is no offence.

(2) that the true construction of the restrictive clause at the end of section 51(1) of the Ordinance is that the Licensing Officer's authority to issue licences does not extend to the issue of licences for the sale by retail for consumption on or off the premises of beer.

And these questions are now submitted to the Supreme Court for the determination whether the decisions were correct in law.

As regards the second question, there is no dispute. The licensing officer clearly cannot issue a liquor-shop licence for the sale of beer on or off the premises, in view of the express terms of section 51(1) and of Form N.

The other question gives rise to greater difficulties. It is submitted on behalf of the accused that section 38(1) gives a statutory right to sell beer in unopened bottles without any licence and that any rule which professes to restrict such right must necessarily be *ultra vires*. On the other hand, it is submitted on behalf of the Crown that it is permissible under section 38(3) (a) to impose conditions for the issue of any licence, and that this is implemented by the power to make rules under section 90(1) (q) prescribing such conditions and in particular by the power to make rules under section 90(1) (s) prescribing what liquors may not be sold.

Now as regards the licence itself, it only professes to deal with the consumption of intoxicating liquors for consumption on the premises. It is silent on the question of the sale of liquors for consumption off the premises. Clearly the licensee is not licensed to sell off the premises liquors for which a licence is required, but where, as in the case of beer no licence is required, there is certainly no prohibition in the licence itself.

The only matter for consideration, therefore, is whether Rule 57, which absolutely probits the holder of a liquor-shop licence from exposing for sale any intoxicating liquors whatever other than Chinese liquors, can be held to be *intra vires*.

The rule appears to be made in pursuance of section 90(1) (s), and so far as this subsection is concerned there is *prima facie* power to make such a rule, but unless such rule is limited to liquors for which a licence is required, the rule clearly contravenes section 38(1) by prohibiting the sale of liquors for which no licence is required.

As regards section 90(1) (q), this only amplifies the provisions of the Ordinance itself—section 38(3) (a) which authorises the licensing authority to prescribe conditions. There are in fact various conditions endorsed upon the licence in question, but there is no condition prohibiting the sale of beer in bottles. It was

argued that the form of the licence, taken from Form N in the Ordinance, operated as a condition precedent against the sale of beer. This clearly cannot be so, as Form N purports to be made under the provisions of section 38 which specifically permits the sale of beer in bottles. The words of the licence merely repeat from the Ordinance itself, the liquors to which the Licensing Officer's authority does not extend in the granting of liquor-shop licences. *Prima facie* under section 38(1) every person has a statutory right to sell beer in unopened bottles. I do not say that it might not be made a condition of granting a liquor-shop licence that the licensee should abandon such statutory right, but this is not what has been done, and I prefer to express no opinion as to whether such a condition would or would not be valid.

In any case the accused was not charged with contravening the provisions of either the licence itself or of section 38(3) (a). He is charged with an offence against rule 57, and as I have said, I find that this rule is inconsistent with the express provisions of section 38(1) of the Ordinance and is accordingly *ultra vires*.

It is more usual, when a Magistrate feels a doubt, as to the validity of a by-law, for the Magistrate to convict, and then state a case. The procedure followed by the learned Magistrate in this case is not, however, without precedent in England (see *Leyton Urban District Council* v. *Chew* (1937) 2 K.B. p. 283), and I am not prepared to say that it is not a proper procedure.

In the result, therefore, I find that the decision of the learned Magistrate is correct.

Appeal dismissed.

Solicitors for the Appellant—
Messrs. Shelley Thompson & Demuth.

[APPELLATE CRIMINAL JURISDICTION]
TERRELL, J.
May 9, 1938.

REX v. FOO SEE CHENG.

[SINGAPORE MAGISTRATE'S APPEAL No. 23 of 1938]

Common Gaming Houses Ordinance (Cap. 30), s. 4(b) and s. 14.

In a charge under s. 4(a) or s. 4(b) of the Common Gaming Houses Ordinance, the charge should allege either that the accused is the owner or that he is the occupier.

A pin table is not necessarily "an instrument or appliance for gaming" but if it has actually been used for gaming on any occasion, then it at once falls within the definition and the presumption under s. 14 of the Ordinance arises; and the Court must infer until the contrary is proved that the place in which the pin table is found is a common gaming house and is so left or used by the occupier thereof.

MAGISTRATE'S APPEAL.

Demuth for appellant.

N. A. Worley, Solicitor General, for the Crown.

The facts and arguments appear sufficiently from the judgment. *Cur. Adv. Vult.*

TERRELL, J.—The accused was charged with permitting premises No. 16 Colombo Court to be kept by another as a common gaming house on the 28th December 1937.

There was a similar charge in respect of the 30th December 1937. Both charges were under s. 4 (b) of the Common Gaming Houses Ordinance.

The accused appears to have been convicted upon both charges but only one punishment was recorded. On the appeal the Crown did not support the conviction on the second charge and the punishment imposed would therefore, in any case, have to be revised.

The complaint was in respect of a pin table and it was alleged that money was staked on the results obtained by the competitiors. It was admitted by the Crown that a pin table is not necessarily "an instrument or appliance for gaming," as, for instance, would be a lottery ticket. On the other hand there can I think be no doubt that if it is proved that a pin table has actually been used for gaming on any occasion, then it at once falls within the definition and the presumption under s. 14 of the Ordinance arises. As a result of such presumption the Court must infer, until the contrary is proved, that the place in which the pin table is found is a common gaming house and is so kept or used by the occupier thereof.

There was sufficient evidence, in my opinion, to give rise to these presumptions, and to support a *prima facie* charge under s. 4(a) of the Ordinance against the accused who was the occupier. If the presumption were not displaced by the evidence of the accused, a conviction would normally follow. As in the present case the accused offered no evidence, being charged under s. 4(b) and not under s. 4(a) of the Ordinance and as the conviction cannot be upheld on the second charge, I will direct that the conviction and order for forfeiture be set aside and that the fine be repaid. The case will be remitted to the Magistrate's Court for a fresh charge to be framed under s. 4(a) of the Ordinance. The pin table will be kept in the custody of the Magistrate's Court and will be dealt with on the hearing of the summons.

I would add that in a charge under s. 4(a) or s. 4(b) of the Ordinance the charge should allege either that the accused is the owner, *or* that he is the occupier. If the prosecution is in doubt as to the facts alternative charges can be framed. In the present case the prosecution had evidence that the accused was the occupier, and he should have been charged as such, and not as the "owner of occupier."

Conviction quashed. Case remitted.

END OF STRAITS SETTLEMENTS OFFICIAL REPORTS.